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No. 83-1532

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

BEN MCFATHER and FRANK MCFATHER, as Co-Administrators of the Estate of CARL MCFATHER; BEN MCFATHER and FRANK MCFATHER, as Co-Administrators of the Estate of ANN B. MCFATHER; BEN MCFATHER and FRANK MCFATHER, as Co-Guardians of DANIEL MCFATHER, JOHN MCFATHER, LORI ANN MCFATHER, ROBERT EDWARD MCFATHER, SUSAN MCFATHER, PAUL MCFATHER and TIMOTHY LYN MCFATHER; and BEN MCFATHER and FRANK MCFATHER, as next friends for DANIEL MCFATHER, JOHN MCFATHER, LORI ANN MCFATHER, ROBERT EDWARD MCFATHER, SUSAN MCFATHER, PAUL MCFATHER and TIMOTHY LYN MCFATHER; and BEN MCFATHER, FRANK MCFATHER, PENNY MCFATHER, JILL MCFATHER, JEFF MCFATHER, DANIEL MCFATHER, LORI ANN MCFATHER, ROBERT EDWARD MCFATHER, SUSAN MCFATHER, PAUL MCFATHER and TIMOTHY LYN MCFATHER,

Appellants,

v.

COTTON STATES MUTUAL INSURANCE COMPANY,

Appellee.

On Appeal from The Supreme Court of Georgia And/Or Petition for Writ of Certiorari

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APPELLEE'S MOTION TO DISMISS THE APPEAL

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QUESTION PRESENTED FOR REVIEW

Does the Supreme Court of Georgia's decision in *Cotton States Mutual Insurance Co. v. McFather*, 251 Ga. 739, ___ S.E.2d ___ (1983), and its application of O.C.G.A. §33-34-6 (Michie 1982) therein, violate the Appellants'[1] due process or equal protection rights under the United States Constitution?

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[1] The parties to this appeal, as named in the caption of the case, will be referred to herein as "Appellants" and "Appellee." Pursuant to Supreme Court Rule 28.1, Appellee shows the Court that it is a corporation and that the following companies are affiliates or subsidiaries of Appellee: Shield Insurance Company, Cotton States Life & Health Insurance Company, Cotton States Investment Company, and STATS, Inc.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
PARTIES TO THE PROCEEDING	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
ARGUMENT IN OPPOSITION TO APPELLANTS' APPEAL AND/OR PETITION FOR CERTIORARI	7
I. Appellants' appeal does not present a substantial federal question and this Court is therefore without jurisdiction	8
A. Appellants question the Georgia Supreme Court's *application* of a state statute rather than challenging the constitutional validity of that statute	8
B. The actions of state courts in deciding questions of state law are not subject to review by this Court	11
II. The federal question sought to be reviewed was not timely or properly raised and was not expressly passed on by the Georgia Supreme Court	14
III. This case has been remanded for further proceedings in the Georgia trial court and the finality requirement of 28 U.S.C.A. §1257 is therefore lacking	17
CONCLUSION	17
STATEMENT RESPECTING FILING	19
AFFIDAVIT OF SERVICE	20

TABLE OF AUTHORITIES

Cases **Page**

Agins v. City of Tiburon, 447 U.S. 255, 100 S.Ct. 2138, 65 L.Ed.2d 106 (1980) 10
Allstate Insurance Co. v. Shuman, 163 Ga. App. 313, 293 S.E.2d 868 (1982) 3
Atlanta Casualty Co. v. Flewellen, 164 Ga. App. 885, 300 S.E.2d 166 (1982) 3
Bethell v. Demaret, 77 U.S. 537, 10 Wall. 537, 19 L.Ed. 1007 (1871) 11
Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673, 50 S.Ct. 451, 74 L.Ed. 1107 (1930) 16
Colwell v. Voyager Casualty Insurance Co., 251 Ga. 744, ___ S.E.2d ___ (1983) 6
Commercial Bank of Cincinnati v. Eunice Buckingham's Executors, 46 U.S. 317, 5 How. 317, 12 L.Ed. 169 (1847) 9, 12
Consolidated Turnpike Co. v. Norfolk & Ocean View Ry. Co., 228 U.S. 596, 33 S.Ct. 605, 57 L.Ed. 982 (1913) 12
Cotton States Mutual Insurance Co. v. McFather, 251 Ga. 739, ___ S.E.2d ___ (1983) 6
Flewellen v. Atlanta Casualty Co. and *Van Dyke v. Allstate Insurance Co.*, 250 Ga. 709, 300 S.E.2d 673 (1983) 4
Great Northern Railway Co. v. Sunburst Oil & Refining Co., 287 U.S. 358, 53 S.Ct. 145, 77 L.Ed. 360 (1932) 16
Harding v. Illinois, 196 U.S. 78, 84, 25 S.Ct. 176, 49 L.Ed. 394 (1904) 16

Jones v. State Farm Mutual Insurance Co., 156 Ga. App. 230, 274 S.E.2d 623 (1980), *cert. dismissed*, 248 Ga. 46, 280 S.E.2d 837 (1981) 1
Lear, Inc. v. Adkins, 395 U.S. 653, 89 S.Ct. 1902, 23 L.Ed. 610 (1969) 13
San Diego Gas & Electric Co. v. City of San Diego, 450 U.S. 621, 101 S.Ct. 1287, 67 L.Ed.2d 551 (1981) 17
State Farm Fire & Casualty Co. v. Sweat, 547 F.Supp. 233 (N.D. Ga. 1982) 3
Waters-Pierce Oil Co. v. Texas, 212 U.S. 112, 29 S.Ct. 227, 53 L.Ed. 431 (1909) 12, 16

Constitutional Provisions

Constitution of the United States—Amendment XIV 8, 12

Statutes

28 U.S.C.A. §1257 17
28 U.S.C.A. §1257(2) 7, 8, 9
O.C.G.A. §§33-34-1 to 33-34-13 (Michie 1982) 2
O.C.G.A. §33-34-5 (Michie 1982) 1
O.C.G.A. §33-34-5(b) 3
O.C.G.A. §33-34-6 14
O.C.G.A. §§33-34-6(b) and (c) 6
Ga. Code Ann. §§56-3401b to 56-3416b 2
Ga. Code Ann. §56-3404(b) (Harrison 1977) .. 1-2

STATEMENT OF THE CASE

Appellee respectfully submits this its "Statement of the Case," in addition to the "Statement" included by the Appellants in their "Jurisdictional Statement,"[3] since, *inter alia*, the Appellants' "Statement" omits the chronology of the Georgia appellate courts' construction and "clarification" of provisions of the unconstitutionally vague no-fault insurance statute pursuant to which the Appellants originally filed their cause of action against the Appellee in the Georgia trial court. (Appellee also does not agree with much of the argumentative nature of the Appellants' "Statement" or with Appendices E and F incorporated into Appellants' "Statement," but finds it premature at this point in the proceedings to address those.)

Appellants' original demand upon Appellee for additional no-fault personal injury protection ("PIP") benefits was premised upon the decision rendered by a three-judge panel of the Georgia Court of Appeals in *Jones v. State Farm Mutual Insurance Co.*, 156 Ga. App. 230, 274 S.E.2d 623 (1980), *cert. dismissed*, 248 Ga. 46, 280 S.E.2d 837 (1981) (hereinafter referred to as *"Jones"*). *Jones* held that the Georgia no-fault statute respecting the offering of optional PIP coverages, O.C.G.A. §33-34-5 (Michie 1982), formerly *Ga. Code Ann.* §56-3404b

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[3] Appellants' "Jurisdictional Statement" will be cited hereinafter as "Appellants' Juris. Statement, p. ___."

(Harrison 1977),[3] required "separate signatures" on the insurance application respecting acceptance or rejection of each of the optioal no-fault coverages. Failure by the insurer to obtain such "separate signatures" resulted in a "continuing offer" to provide the optional levels of coverage. This "continuing offer" could be accepted even after the insured had been involved in an automobile accident and had previousy paid premiums only for the lower coverage, and even though evidence indicated knowing consent by the insured to the lower level, and would apply retroactively and cover the losses suffered in that accident. After the Georgia Supreme Court dismissed its grant of certiorari in *Jones* as improvidently granted in September of 1981, Appellee, along with other members of the automobile insurance industry in the State of Georgia, began receiving a multitude of claims based upon the *Jones* decision for retroactive increased no-fault PIP coverage. Included among these claims was the claim of the Appellants.

Appellee denied the Appellants' claim in December of 1981, for the reason that Appellee did not understand the No-Fault Act to require the payment of the claim asserted by the Appellants. Appellee,

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[3] On November 1, 1982, the Goergia Motor Vehicle Accident Reparations Act, (hereinafter the "No-Fault Act"), was recodified as O.C.G.A. §§33-34-1 to 33-34-13 (Michie 1982). Prior to the adoption of the Michie Company's Code revision on that date, the No-Fault Act was cited as *Ga. Code Ann.* §§56-3401b to 56-3416b. All citations of the No-Fault Act and its various sections in this Motion/Brief will be to the currently in force O.C.G.A. rather than to the *Ga. Code Ann.*

along with numerous other insurers, commenced declaratory judgment actions involving claims asserted under the *Jones* decision, and defended other such claims, all in an effort to obtain from the Georgia appellate courts, as well as the federal courts in Georgia, clarification of *Jones'* impact upon insurers' obligations under the No-Fault Act and a determination that the No-Fault Act, as interpreted and applied in *Jones*, violated insurers' constitutional rights.

Shortly thereafter, in *State Farm Fire & Casualty Co. v. Sweat*, 547 F.Supp. 233 (N.D. Ga. 1982), the federal district court, not being free to pass upon the merits of *Jones*, held that *Jones* could not be applied retroactively due to the lack of any fair warning to insurance companies regarding the "continuing offer" penalty provided by *Jones*. Subsequently, the Georgia Court of Appeals ruled in *Allstate Insurance Co. v. Shuman*, 163 Ga. App. 313, 293 S.E.2d 868 (1982), that a declaratory judgment action could be maintained respecting a *Jones*-type claim, given the mass confusion and reigning uncertainty which the *Jones* decision had yielded. In the midst of the *Jones*-created uproar, the Georgia General Assembly amended O.C.G.A. §33-34-5(b), to become effective on November 1, 1982, so as to delete the reference to "separate signatures." Then, in December of 1982, in *Atlanta Casualty Co. v. Flewellen*, 164 Ga. App. 885, 300 S.E.2d 166 (1982), the *en banc* Court of Appeals overruled *Jones* and held that one signature on no-fault insurance applications complied with the Georgia statute.

In March of 1983, the Georgia Supreme Court rendered decisions in the companion cases of *Flewellen v. Atlanta Casualty Co.* and *Van Dyke v. Allstate Insurance Co.*, 250 Ga. 709, 300 S.E.2d 673 (1983) (hereinafter referred to as "*Flewellen*"), reversing the Court of Appeals' *Flewellen* decision, but declining to follow the *Jones* "continuing offer" theory. The Supreme Court held that the one signature on Atlanta Casualty's application was insufficient and that maximum optional PIP coverage was automatically included in the insurance policy if a proper rejection of same was not made through a correctly drawn application. Allstate's application was held to be sufficient to reject optional PIP coverages because it had a separate signature for collision and a separate signature for PIP coverage. Motions for reconsideration were denied and the Supreme Court's *Flewellen* decision became final on March 23, 1983.

As the Appellants' "Statement" reflects, their claim against Appellee had come on for trial in the interim, on June 28, 1982. The trial court tried the case under the presumption that *Jones* was controlling law and permitted the jury to consider the question of and assess against Appellee statutory penalties, attorneys' fees, and punitive damages on the basis of Appellee's failure to pay the Appellants' claim within thirty or sixty days of their original *Jones* demand. Appellee objected, contending, *inter alia*, that consideration by the jury of the question of statutory penalties and punitive damages should not have been allowed as a matter of law, given the uncertainty respecting the meaning of *Jones* and its

impact upon requests for retroactive increases in PIP coverage.

After the jury handed down a verdict against Appellee, including penalties, attorneys' fees, and punitive damages, on June 30, 1982, the Georgia Supreme Court issued its definitive decision in *Flewellen*. In fact, the Georgia Supreme Court's *Flewellen* decision was not rendered until after Appellee had filed its post-trial Motion for a New Trial, or, in the alternative, Judgment Notwithstanding the Verdict. As the Briefs filed in the Georgia Supreme Court reflect, and as oral argument before that Court confirmed, Appellee, deeming its obligations under Georgia's no-fault statute, insofar as the Georgia courts were concerned, to have been clarified by the Georgia Supreme Court's decision in *Flewellen*, tendered the optional no-fault benefits claimed by the Appellants within thirty days of the *Flewellen* decision. By this point in time, Appellee had filed its Notice of Appeal respecting the trial court's rulings on its various motions during the course of the trial, and the record on appeal in the Georgia Supreme Court had been transmitted. Thus, the issue of Appellee's tender of the optional no-fault PIP benefits required by *Flewellen* was never made a part of the trial court record in the case below purely as a result of the sequence of events respecting the Georgia Supreme Court's decision in *Flewellen*, the Georgia trial court's issuance of its Order on Appellee's post-trial motions, and the appeal of the rulings on those motions.

Finally, in the Georgia Supreme Court's decision in the case at hand, *Cotton States Mutual Insurance Co. v. McFather*, 251 Ga. 739, ____ S.E.2d ____ (1983), Appellee's interpretation of its obligations under the Georgia Supreme Court's *Flewellen* decision was confirmed, insofar as the Georgia courts were concerned, when the Court held that Appellee's failure to pay optional PIP benefits, in response to the *Jones*-type demand of the Appellants, until *Flewellen* was final on March 23, 1983, under the circumstances of the subject uncertainty as to its obligations, would not support an award of bad faith penalties and punitive damages. The *McFather* decision was followed by the Georgia Supreme Court in *Colwell v. Voyager Casualty Insurance Co.*, 251 Ga. 744, ____ S.E.2d ____ (1983), where the Court reversed that portion of the Georgia Court of Appeals' opinion which had allowed the pre-*Flewellen* failure to pay optional PIP benefits pursuant to a *Jones* demand to serve as a basis for penalties and punitive damages.

The Georgia Supreme Court remanded the instant case to the trial court for resolution of any factual dispute respecting Appellee's tender of the optional PIP benefits within thirty days of March 23, 1983, which tender they held would preclude imposition of penalties, attorneys' fees, and punitive damages under O.C.G.A. §33-34-6(b) and (c). 251 Ga. at 744.

Appellants contend in the appeal at bar that the Georgia Supreme Court's actions in applying Georgia's No-Fault Act and in remanding this case to the trial court for clarification of a factual issue which

the Court deemed relevant to imposition of a portion of the judgment violated Appellants' due process and equal protection rights under the United States Constitution.

ARGUMENT IN OPPOSITION TO APPELLANTS' APPEAL AND/OR PETITION FOR CERTIORARI[4]

Appellants' claims in this Court do not challenge the *validity* of a Georgia statute.[5] Instead, Appellants challenge the constitutionality of the manner in which the Georgia Supreme Court *applied* a Georgia statute, as well as the constitutionality of that Court's consideration of facts deemed pertinent in applying that statute, and the alleged lack of authority by the Court to take those actions. In essence, Appellants seek nothing more than to have this Court override the Georgia Supreme Court's interpretation and application of Georgia law.

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[4] Appellants seek to appeal, under 28 U.S.C.A. §1257(2), the decision of the Georgia Supreme Court rendered below, but Appellants request this Court to consider their "Notice of Appeal" and "Jurisdictional Statement" as their Petition for Certiorari, "[i]n the event this Court does not find jurisdiction with respect to this Appeal." (Appellants' Juris. Statement, p. 2). Thus, while this pleading is denominated as "Appellee's Motion to Dismiss the Appeal," Appellee respectfully requests that the Court consider its pleading as Appellee's Brief in Opposition to the Petition for Certiorari, in the event that Appellants' Appeal is considered to be a Petition for Certiorari.

[5] Appellee does challenge the validity of the statute in its cross-appeal.

I. APPELLANTS' APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION AND THIS COURT IS THEREFORE WITHOUT JURISDICTION.

A. Appellants question the Georgia Supreme Court's *application* of a state statute rather than challenging the constitutional validity of that statute.

In attempting to invoke this Court's jurisdiction, Appellants claim that their "action for benefits, penalty, attorneys' fees and punitive damages draws in question the Georgia 'no-fault' insurance law, . . . as said statute was construed and applied by the Supreme Court of Georgia in the above-stated case, on the grounds that the construction and application of said State statute is repugnant to the due process clause of the Fourteenth Amendment to the Constitution of the United States." (Appellants' Juris. Statement, p. 3). The Appellants do *not* draw into question the constitutional *validity* of the state statute itself; indeed, Appellants' claim against Appellee is premised upon rights allegedly provided by that very statute. They contend further that that application deprived them of some property right. The property right, however, is contended to be the alleged right of Appellants to have left intact a judgment, which judgment was *subject to being and was appealed*. There is no "right" to avoid having a judgment modified on appeal.

Section 1257(2) of Title 28 of the United States Code does not provide for Supreme Court review by

appeal where the construction or application of a statute is challenged, rather than the actual validity of the statute itself:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
> (2) By appeal, where is drawn in question the validity of a statute of any state on the grounds of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

28 U.S.C.A. §1257(2).

Review by appeal is unavailable in this Court where the appellant claims that a state court's misconstruction of a state statute renders it unconstitutional, although the appellant admits the state statute to be valid. In the early decision of *Commercial Bank of Cincinnati v. Eunice Buckingham's Executors*, 46 U.S. 317, 5 How. 317, 12 L.Ed. 169 (1847), respecting the application of a state banking statute to a particular bank, the Court explains the fallacy of such an attempted appeal:

> [T]he allegation of the plaintiffs' counsel is, that the statute of 1824 was not intended by the legislature to apply to their charter, and that the court erred in their construction of it; and therefore made it unconstitutional by their misconstruction. A most strange conclusion from such premises.

> But grant that the decision of that court could have this effect; it would not make a case for the jurisdiction of this court, whose aid can be invoked only where an act alleged to be repugnant to the Constitution of the United States has been decided by the state court to be valid, and not where an act admitted to be valid has been misconstrued by the court . . . . It is the peculiar province and privilege of the state courts to construe their own statutes; and it is no part of the functions of this Court to review their decisions, or assume jurisdiction over them on the pretence that their judgments have impaired the obligation of contracts. The power delegated to us is for the restraint of unconstitutional legislation by the States, and not for the correction of alleged errors committed by their judiciary.

5 How. at 342-343.

More recently, in *Agins v. City of Tiburon*, 447 U.S. 255, 100 S.Ct. 2138, 65 L.Ed.2d 106 (1980), that rule was restated when the Court explained that an objection to a state supreme court's application of state law does not raise a federal question appropriate for review by the United States Supreme Court. 447 U.S. at pp. 259-260, fn. 6.

Appellants' attempted appeal in the case at hand complains of nothing more than the Georgia Supreme Court's application of a state statute rather than of the constitutional validity of that statute, and this Court therefore cannot entertain jurisdiction of this appeal.

B. The actions of state courts in deciding questions of state law are not subject to review by this Court.

Appellants complain that their federal constitutional rights to due process and equal protection have been egregiously violated by the Georgia Supreme Court's actions in remanding the case to the trial court for resolution of a factual issue deemed pertinent. Aside from the fact that the Georgia Supreme Court merely utilized the commonplace and unremarkable procedure of remanding a case to the trial court for resolution of a factual issue which cannot be resolved based on the record on appeal (hardly a denial of due process since the Georgia Supreme Court merely seeks to have a factual issue resolved by the trial court, where, presumably, due process will be afforded to Appellants), the authorities confirm that the practices of state courts in deciding questions of state law are not subject to review by the Supreme Court.

In *Bethell v. Demaret*, 77 U.S. 537, 10 Wall. 537, 19 L.Ed. 1007 (1871), the Court held that a decision of the Louisiana Supreme Court respecting the validity of promissory notes given for the loan of Confederate currency did not present a federal question even though the petitioner in the United States Supreme Court claimed a constitutional violation of the impairment of contracts clause. The petitioner did not challenge the validity of a state statute, and the Court indicated, ". . . the authority conferred on a court to hear and determine cases in a State, is

not the kind of authority referred to in the 25th section [of the Judiciary Act], otherwise every judgment of the Supreme Court of a State would be reexaminable under the section . . . ." 10 Wall. at 540.

The decision of *Commercial Bank of Cincinnati v. Eunice Buckingham's Executors*, 46 U.S. 317, 5 How. 317, 12 L.Ed. 169 (1847), also admonished against the United States Supreme Court's assumption of jurisdiction over cases decided by the highest courts of the several States on the pretense that the *judgments* of those courts violated federal constitutional rights.

In addition, this Court noted in *Consolidated Turnpike Co. v. Norfolk & Ocean View Ry. Co.*, 228 U.S. 596, 33 S.Ct. 605, 57 L.Ed. 982 (1913), that the Virginia Supreme Court's application of state law in determining condemnation rights did not justify the exercise of jurisdiction by the United States Supreme Court. "The claim that in thus holding and deciding the court below denied to the plaintiff in error due process of law under the Fourteenth Amendment is neither real nor substantial, but so entirely without merit as to justify this Court in refusing to take jurisdiction." 228 U.S. at 603.

In *Waters-Pierce Oil Co. v. Texas*, 212 U.S. 112, 29 S.Ct. 227, 53 L.Ed. 431 (1909), the plaintiff in error claimed that its due process and equal protection rights had been violated because of the *manner* in which the state appellate court acted in appointing a receiver, thereby depriving the plaintiff of its prop-

erty. The Court held that the state court's actions were insufficient to present a substantial federal question, and stated:

> The practice of the state courts in acting upon matters within their jurisdiction is left for the States and their courts administering their laws to determine, and if the court saw fit to act upon the testimony already heard and the conviction already had [in a separate proceeding] of the violation of the anti-trust laws of the State, there is nothing in the Federal Constitution which prevents it from so doing. Nor does the time or manner in which the state court saw fit to approve the receiver's bond present any question under the Fourteenth Amendment.

212 U.S. at 118.

This Court's refusal to accord federal constitutional significance to a state appellate court's consideration of matters not contained in the trial record is reflected in *Lear, Inc. v. Adkins*, 395 U.S. 653, 89 S.Ct. 1902, 23 L.Ed. 610 (1969), where the plaintiff in error complained of the state court's reliance on an agreement which was not part of the trial court record. This Court noted, "Lear argues that this original agreement was not submitted in evidence at trial and so should not be considered a part of the record on appeal. The California Supreme Court, however, treated the agreement as an important part of the record before it, 67 Cal.2d, at 906, 436 P.2d, at 335; and so we are free to refer to it." 395 U.S. at 657 fn. 1.

This Court cannot, and should not, undertake to review by appeal the compliants of plaintiffs in error respecting the manner in which the Supreme Courts of the various States consider evidence in the records before them.

Appellants' claims that the Georgia Supreme Court somehow violated their due process rights in remanding this case for further consideration by the trial court is patently without merit, and curious, since the procedural tool of remand is widely used and accepted and, especially in the case at hand, is employed for the very purpose of developing facts not contained within the record so that the due process rights of the parties to a full and fair hearing on issues deemed important by the state court are preserved. Appellants cannot seriously contend that this remand procedure deprives them of rights, since the remand relates to the disposition of a judgment which was the subject of the appeal.

II. THE FEDERAL QUESTION SOUGHT TO BE REVIEWED WAS NOT TIMELY OR PROPERLY RAISED AND WAS NOT EXPRESSLY PASSED ON BY THE GEORGIA SUPREME COURT.

Even though *Appellee* argued consistently in the trial court below, as well as in the Georgia Supreme Court, that the statutory penalty, attorneys' fees, and punitive damages of O.C.G.A. §33-34-6 could not be applied as a matter of law in *Jones*-type claims, Appellants never once raised, prior to the Georgia Supreme Court's decision in this case, the

constitutional arguments they now seek to pursue. Indeed, Appellants did not even raise these purported constitutional issues in their first Motion for Rehearing which was filed on December 15, 1983. The only reference by Appellants in that first Motion for Rehearing to constitutional considerations was that the Georgia Supreme Court's decision in this case "raises substantial questions as to state and federal due process and state and federal equal protection." Only in their second Motion for Reconsideration, filed on December 31, 1983, did Appellants raise specific arguments with respect to the purported unconstitutionality of the Georgia Supreme Court's decision in this case.

Thus, Appellants did not raise their constitutional claims at the first opportunity, and, in any event, the Georgia Supreme Court Opinion did not supply any new and unexpected constitutional grounds, since the Georgia Supreme Court merely adopted some of the arguments made by Appellee consistently throughout the litigation respecting the unlawfulness of subjecting insurers to statutory penalties, attorneys' fees, and punitive damages in *Jones*-type claims prior to clarification of the law respecting no-fault insurance applications by the Georgia appellate courts.

Generally, neither a petition for rehearing, nor a petition for a writ of error in the state court after judgment, nor an assignment of error in the Supreme court, can cure the failure of the record to show that a federal question was raised by the appellant and decided against the appellant, so that

jurisdiction can be conferred on the Supreme Court of a writ of error to the state court. *Harding v. Illinois*, 196 U.S. 78, 84, 25 S.Ct. 176, 49 L.Ed. 394 (1904). The Appellants in the case at hand are subject to this general rule, because they failed to raise their federal claims at the first opportunity and because, in any event, the grounds of the Georgia Supreme Court's decision below did not supply any new or unexpected basis for a claim by Appellants of a denial of federal rights. *See Great Northern Railway Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358, 53 S.Ct. 145, 77 L.Ed. 360 (1932); *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 50 S.Ct. 451, 74 L.Ed. 1107 (1930).

Furthermore, this Court has recognized that an "attempt to assign new errors in the petition for rehearing, which was overruled without an opinion passing on Federal questions, cannot avail . . .", and no substantial federal question is presented in such a case. *Waters-Pierce Oil Co. v. Texas*, 212 U.S. 112, 118, 29 S.Ct. 227, 53 L.Ed. 431 (1909). Appellants admit that they did not raise their purported constitutional claims until the second Motion for Rehearing, and Appendix C to Appellants' "Jurisdictional Statement" reflects that Appellants' second Motion for Rehearing was denied without an opinion passing on the purported federal questions.

Hence, the federal questions sought by Appellants to be reviewed herein were neither timely nor properly raised and were not expressly passed on by the Georgia Supreme Court, and this Court should therefore dismiss Appellants' appeal.

III. THE CASE HAS BEEN REMANDED FOR FURTHER PROCEEDINGS IN THE GEORGIA TRIAL COURT AND THE FINALITY REQUIREMENT OF 28 U.S.C.A. §1257 IS THEREFORE LACKING.

The finality requirement of 28 U.S.C.A. §1257 applies to United States Supreme Court review by way of appeal and by way of granting a writ of certiorari. Where a case is remanded and clearly contemplates further proceedings in the trial court to resolve disputed factual issues, an attempted appeal to the United States Supreme Court must be dismissed because of the absence of a final judgment. *See San Diego Gas & Electric Co. v. City of San Diego*, 450 U.S. 621, 101 S.Ct. 1287, 67 L.Ed.2d 551 (1981). This Court should not undertake to review an opinion of the Georgia Supreme Court where that very opinion provides that the case be remanded to the trial court for further proceedings to resolve disputed factual issues.

CONCLUSION

This Court is without jurisdiction, in that no substantial federal question is presented; the federal question sought to be reviewed was not timely or properly raised and was not expressly passed on by the Georgia Supreme Court; and the judgment sought to be reviewed is not final. The Motion to Dismiss the Appeal should be granted or, in the al-

ternative, Appellants' Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

G. CONLEY INGRAM

OSCAR N. PERSONS

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STATEMENT RESPECTING FILING

I, G. Conley Ingram, counsel of record for the Appellee herein and a member of the Bar of the Supreme Court of the United States, hereby state under oath that on the 17th day of April, 1984, within the time permitted by the Rules of the United States Supreme Court, I caused to be deposited in the United States Post Office located at Cumberland Mall, Atlanta, Georgia, with first-class postage prepaid, and properly addressed to the Clerk of the Supreme Court of the United States, forty (40) copies of the within and foregoing Appellee's Motion to Dismiss.

_____

G. CONLEY INGRAM

Sworn to and subscribed before me this ____ day of _____, 1984.

_____

Notary Public

AFFIDAVIT OF SERVICE

I, Vickie Cheek Lyall, hereby state under oath that I am of Counsel for Appellee, Cotton States Mutual Insurance Company, and that I have served three copies of the within and foregoing Appellee's Motion to Dismiss the Appeal by mailing same, properly addressed, first-class postage prepaid, to Albert W. Stubbs, of Hatcher, Stubbs, Land, Hollis & Rothchild, Post Office Box 2707, Columbus, Georgia 31993, Counsel of Record for Appellants.

This 17th day of April, 1984.

_____

VICKIE CHEEK LYALL

Sworn to and subscribed before me this ____ day of _____, 1984.

_____

Notary Public